

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

WILLIAM T. ROBINSON,

Plaintiff,

v.

Civil Action No. **3:09CV249**

PRISON HEALTH SERVICES, INC., *et al.*,

Defendants.

MEMORANDUM OPINION

On September 1, 2010, the Court received a motion to dismiss the present action without prejudice from Plaintiff. Because Defendants Jones, Burke, and Batts ("Defendants") had filed a motion for summary judgment, Plaintiff may not dismiss this action as a matter of right. Fed. R. Civ. P. 41(a)(1). Nevertheless, a plaintiff's motion for dismissal without prejudice should not be denied absent substantial prejudice to the defendant. *See Andes v. Versant Corp.*, 788 F.2d 1033, 1036 (4th Cir. 1986). Defendants have not alleged and the record does not suggest that Defendants will suffer substantial prejudice if the action is dismissed. Accordingly, the Court will grant Plaintiff's motion (Docket No. 26) and the action will be DISMISSED WITHOUT PREJUDICE.

An appropriate Order shall issue.

Date: OCT - 5 2010
Richmond, Virginia

<p><u>/s/</u> Richard L. Williams United States District Judge</p>
--